

DRAFT

PLANNING & ADMINISTRATION MEETING 12-18-03

MONTGOMERY COUNTY FIRE AND RESCUE COMMISSION POLICY

PROCEDURES FOR MCFRS INVESTIGATIONS

Issued by: Montgomery County Fire and Rescue Commission

Policy No. 06-05

Authority: Montgomery County Code Chapter 21-2.(d)(2) and 21-3(e)

Effective Date:

SUMMARY: This policy establishes a procedure for the consistent, prompt, and comprehensive investigation of MCFRS personnel concerning allegations of misconduct, and/or violations of law, regulation, or policy.

DEADLINES

Division of Fire and Rescue Services Review:	, 2004
Division of Volunteer Fire and Rescue Services Review:	, 2004
Local Fire and Rescue Departments Review:	, 2004
Montgomery County Fire Board Review:	2004

ADDRESS: Please send all comments pertaining to the proposed policy to Beth Feldman, Montgomery County Fire and Rescue Service, 12th Floor, 101 Monroe Street, Rockville, MD 20850. Comments may also be e-mailed to beth.feldman@montgomerycountymd.gov

STAFF: For additional information, please contact Beth Feldman on (240) 777-2423.

Sec. 1. Purpose: To establish a procedure that facilitates a prompt and appropriate investigation by the Office of Internal Affairs (OIA) or a Local Fire and Rescue Department (LFRD) of allegations of misconduct attributed to Montgomery County Fire and Rescue Service (MCFRS) personnel for alleged violations of the *Code of Ethics and On-Duty Personal Conduct* Executive Regulation No. 22-00AM, and any other applicable federal, State and County laws, regulations or policies. The Internal Affairs Officer must assist the Fire and Rescue Commission and the Fire Administrator in monitoring compliance with law, as well as Commission policies, regulations, and procedures, and in investigating matters assigned by the Fire Administrator or the Commission. The LFRD must investigate allegations of misconduct under Section 21-3(g) of the County Code. This policy does not limit or abolish the Fire Administrator's concurrent responsibility to investigate and take immediate and appropriate action required by law, regulation, or policy, concerning the conduct of MCFRS personnel.

Sec. 2. Applicability. This policy applies to all operational and administrative personnel of the Montgomery County Fire and Rescue Service.

Sec. 3. Definitions.

- a. **Complaint.** A formal accusation or charge of an alleged violation against MCFRS personnel.
- b. **Counseling.** A non-disciplinary corrective action in which a supervisor provides guidance to a subordinate.
- c. **Division of Fire and Rescue Services (DFRS).** The Division of the Montgomery County Fire and Rescue Service comprising career employees that shares with the Local Fire and Rescue Departments and the Division of Volunteer Fire and Rescue Services the responsibility for providing direct fire suppression, rescue, and emergency medical services.
- d. **Division of Volunteer Fire and Rescue Services (DVFRS).** The Division of the Montgomery County Fire and Rescue Service which includes the Local Fire and Rescue Departments, that shares with DFRS the responsibility for providing direct fire suppression, rescue, and emergency medical services.
- e. **Exonerated.** The result of an investigation indicating that the actions of an accused individual were found lawful, proper, and/or consistent with law, regulation, or policy.
- f. **Fire Administrator.** The non-uniformed department head of the Montgomery County Fire and Rescue Service who is appointed by the County Executive. The Fire Administrator serves as non-voting ex officio chair of the Fire and Rescue Commission and is responsible for implementing and enforcing Commission policies, procedures, and regulations, administering all fire and rescue services provided in the County, and supervising the Chiefs of both the Division of Fire and Rescue Services and the Division of Volunteer Fire and Rescue Services.
- g. **Internal Affairs Officer.** The individual appointed by the Fire Administrator, on the recommendation of the Commission, to assist the Commission and the Administrator in monitoring compliance with law, County and Commission policies, regulations, and procedures, and to investigate matters assigned by the Commission or Administrator.
- h. **Local Fire and Rescue Department (LFRD).** The component of the Montgomery County Fire and Rescue Service that provides direct fire suppression, rescue, and emergency medical services, in conjunction with the Division of Fire and Rescue Service.
- i. **Misconduct.** Improper behavior of a nature or degree that is lesser in degree of severity than a serious violation, and that, if sustained, would be appropriately dealt with through counseling or an oral admonishment.
- j. **Montgomery County Fire and Rescue Service (MCFRS).** The combined service comprising the Division of Fire and Rescue Services and the Division of Volunteer Fire and Rescue Services, which includes the Local Fire and Rescue

Departments and their administrative personnel.

- k. **Office of Internal Affairs (OIA)**. An office of the Montgomery County Fire and Rescue Service, established by the Fire Administrator, to investigate and monitor compliance with law, and County and Fire and Rescue Commission policies, regulations, and procedures.
- l. **Personnel**. All MCFRS employees and volunteers, including firefighters, rescuers, emergency medical service providers, and administrative personnel, as provided in Montgomery County Code 2-39A.
- m. **Retaliation**. An act of retribution or revenge against an individual for reporting an illegal or improper action, or for participating in an investigation.
- n. **Serious Violation**. An alleged incident by MCFRS personnel involving a threat to the public or personnel safety, or related to a violation that undermines the public trust and confidence in the fire and rescue service. A serious violation includes an egregious: negligent act or omission; theft of property; criminal felony; assault; battery; or other violation of law, County policy, Commission policy, or any order of the Fire Administrator.
- o. **Sustained**. The result of an investigation indicating that adequate proof exists to confirm or support that a violation of law, regulation, or policy has occurred.
- p. **Unfounded**. The result of an investigation indicating that adequate evidence does not exist to support a finding that a violation has occurred, or that an allegation could be sustained.
- q. **Unsustained**. The result of an investigation indicating that sufficient evidence is lacking that would prove or disprove that a violation occurred.

Sec. 4. Policy Statement. It is the policy of the **Montgomery County Fire and Rescue Service** to ensure that allegations of **misconduct** and **retaliation** against **MCFRS personnel** that may be subject to disciplinary and/or other corrective action, are consistently and promptly investigated under procedures established in this policy, in conjunction with provisions in the Commission's *Code of Ethics and On-Duty Personal Conduct*, Executive Regulation No. 22-00AM.

Sec. 5. Procedure.

- a. **Filing a Complaint.**
 - 1. **Written Complaints- DVFRS Personnel.** Written **complaints** alleging **misconduct** of **DVFRS personnel** may be submitted to an **LFRD** Chief or President by completing the **MCFRS Complaint** Form (Attachment A), or by completing a written narrative describing the incident. Information provided in the filing must include: the date, time, and location where the alleged incident occurred; the name(s) of the accused, if known; and the

names of possible witnesses, if known. The **Internal Affairs Officer** will return a photocopy of the **complaint** to the complainant as a receipt.

2. Written Complaints- DFRS Personnel. Written **complaints** alleging **misconduct** of **DFRS personnel** may be submitted to the on-duty **DFRS Battalion Chief** by completing the **MCFRS Complaint Form** (Attachment A), or by completing a written narrative describing the incident. Information provided in the filing must include: the date, time, and location where the alleged incident occurred; the name(s) of the accused, if known; and the names of possible witnesses, if known. The **Internal Affairs Officer** will return a photocopy of the **complaint** to the complainant as a receipt.
 3. Verbal Complaints. A **complaint** of **misconduct** against **personnel** also may be reported verbally.
 4. Referral of Citizen Complaints. **Personnel** must refer a citizen's **complaint** to the appropriate on-duty **DFRS Battalion Chief** for **complaints** against **DFRS personnel**, or to the appropriate **LFRD Chief** or **DVFRS Chief** for **complaints** against **LFRD** or **DVFRS personnel**.
 5. Reporting Procedure for Personnel Who File or Receive Complaints. **Personnel** who witness a violation, or who receive a **complaint** of a violation against another individual, must follow the reporting procedure outlined in the *Code of Ethics and On-Duty Personal Conduct*, Executive Regulation 22-00AM.
 6. Anonymous Complaints. **Complaints** from individuals who wish to remain anonymous may be submitted to **OIA** for investigation. **Complaints** initiated by anonymous callers will be documented by the receiver and referred to **OIA**, to make a preliminary inquiry. If **OIA** conducts an investigation, it must document the case, and the **personnel** who are the subject of the **complaint** (if known) must be notified of the **complaint** and the result of the investigation.
- b. Allegations of Serious Violations. **Serious violations** must be reported promptly to the **Fire Administrator**, who may assign investigations involving **serious violations** to one or more of the following authorities: **OIA**, or the County's EEO Officer, Office of Management and Budget, Office of Finance, Office of Legislative Oversight, or other appropriate authorities. The FRC and the **LFRD Chief** and President may seek **OIA's** assistance in conducting investigations through the **Fire Administrator**.
- c. Other Complaints Brought to the Attention of the Fire Administrator. The **Fire Administrator** must determine whether other investigations will be conducted by **OIA**, other investigative authorities, or by the individual's Battalion Chief or **LFRD Chief** or President. Recognizing that discipline is a command responsibility, and that **complaints** should be investigated at the lowest possible level, the **Fire**

Administrator will determine investigative responsibility based on:

1. the type of **complaint**;
 2. the source of the **complaint**;
 3. the number of **personnel** or witnesses involved;
 4. whether the complainant, witness, and/or accused **personnel** are assigned to the same unit;
 5. any jurisdictional limitations;
 6. whether allegations involve graft, corruption, or whistleblowing; and
 7. whether any other allegations merit or require investigation.
- e. **OIA Log.** When a **complaint** is forwarded to **OIA**, that office must maintain a confidential log of all **complaints** received, with individual case numbers assigned. The log must record related information, including:
1. name(s) of accused **personnel**;
 2. name(s) of the complainant(s);
 3. location where the incident allegedly occurred;
 4. nature of the **complaint**;
 5. date the alleged incident occurred;
 6. date the **complaint** was received;
 7. name of the individual assigned to investigate the **complaint**; and
 8. final disposition of the **complaint**.
- f. **Cases Assigned to OIA.** **OIA** will conduct and complete a thorough investigation and forward its report and recommendations to the **Fire Administrator**, who must notify the appropriate authority to take proper action.
- g. **MCFRS Internal Reports.** All internal investigative reports from **OIA** to the Fire Administrator, the **DFRS** Chief, or the **LFRD** Chief must include:
1. a description of the alleged violation;
 2. an investigative report that includes a chronological statement of facts; and

3. findings of fact, classified as:

- A. **Unsustained;**
- B. **Unfounded;**
- C. **Exonerated;** or
- D. **Sustained;**

h. Interrogation of Accused **Personnel**. Accused **personnel** may be represented during any interview or interrogation, as outlined in Sec. 5.d.2. of the *Code of Ethics and On-Duty Personal Conduct*, Executive Regulation No.22-00AM, and the Collective Bargaining Agreement, if applicable.

i. Record of Interrogation by **OIA**. **OIA** must maintain a complete record of the interrogation, which may be written, tape recorded, or transcribed. A copy of the interrogation record will be made available at the request of the individual under investigation, or his/her designated representative, not less than ten days before any hearing.

j. Interrogation Rights and Waiver Form. When an individual is accused of **misconduct** that may constitute a crime, a law enforcement official (police and/or State's Attorney) must be consulted before any interviews are conducted. If the individual will not be criminally prosecuted, the individual must be advised of his/her legal rights before the interrogation begins.

k. Confidentiality and Access Requirements for **OIA** Files and Investigative Reports.

1. If **OIA** conducts an investigation to determine facts related to an individual's behavior that may lead to disciplinary action, **OIA's** file constitutes a confidential personnel record of the individual who is the subject of the investigation.

2. Merit system employees who are the subject of an investigation that may lead to disciplinary action must have access to **OIA** records consistent with the terms of the relevant collective bargaining agreement (if applicable), personnel regulations, and State law.

3. Volunteer **personnel** and **LFRD** employees who are the subject of an **OIA** investigation that may lead to disciplinary action must have access to **OIA** records, consistent with the disclosure of personnel records under State law.

l. Hearings and Access to Investigative Case Files. If an individual appeals a disciplinary action and **OIA** has investigated the matter, the individual may request, in writing, a copy of the investigative record from **OIA**, which must make the record available for review within 5 business days. If the individual requests a copy of

the record, **OIA** must provide a copy of the investigative file within 15 business days. The individual must pay the current County rate for photocopying.

- m. Law Enforcement Investigations. Although the appropriate law enforcement agency is responsible for investigating traffic offenses or criminal investigations, **OIA** may conduct a concurrent investigation in cooperation with that agency. However, **OIA** will interview **personnel** independent of any police interview or interrogation, and will not be involved in the interrogation of accused **personnel** conducted by law enforcement investigators, unless requested to do so by a law enforcement investigator.
- n. **OIA** Notification Procedures.
 - 1. An **LFRD** or **DFRS** Chief Officer, or the officer in charge of an incident, should notify **OIA** when **personnel** have been involved in any incident requiring immediate investigation. If a command officer is unavailable, the senior ranking officer on the scene of the incident/event should make the notification.
 - 2. **OIA** will immediately notify the **Fire Administrator**, **LFRD** Chief, **DVFRS** Chief, or **DFRS** Chief, as appropriate, of incidents requiring the immediate response.
 - 3. **OIA** must respond immediately when **personnel**:
 - A. have intentionally or accidentally discharged an **MCFRS**-issued firearm, except for authorized target practice or qualification;
 - B. are charged with a criminal offense, or are alleged to have committed criminal activity requiring a police investigation, regardless of jurisdiction of occurrence;
 - C. are charged with having operated a motor vehicle while under the influence of alcohol or drugs; or
 - D. have operated a vehicle involved in a fatal accident.

Sec. 6. Reports. **OIA** will provide semi-annual reports to the **Fire Administrator** in June and December of each year, compiling statistical data on **complaints** received, and the disposition of these **complaints**, by member affiliation, assignment, and rank, for the previous six-month period. This report will be coded, with names expunged.

Sec. 7. Enforcement. The **Fire Administrator** is the enforcement authority for all policies and regulations of the **Montgomery County Fire and Rescue Service**, and the final authority for all disciplinary actions involving **Montgomery County Fire and Rescue Service personnel**.

Sec. 8. Effective Date. This policy is effective on _____.

Attest:

Gordon A. Aoyagi, Chairman
Montgomery County Fire and Rescue Commission

Date